

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

# AGENDA

Wednesday, November 9, 2005  
9:00 a.m.

Water Quality Control Board  
Regional Board Meeting Room  
9174 Sky Park Court  
San Diego, California

The Regional Board requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the Regional Board has the opportunity to fully study and consider written material, comments should be received in the Regional Board's office no later than 5:00 P.M. on Wednesday, October 26, 2005, and should indicate the agenda item to which it is applicable. If the submitted written material is more than 5 pages or contains foldouts, color graphics, maps, etc., 20 copies must be submitted for distribution to the Regional Board members and staff. Written material submitted after 5:00 P.M. on Wednesday, November 2, 2005 will not be provided to the Regional Board members and will not be considered by the Regional Board. ***PLEASE NOTE THAT SOME ITEMS ON THE AGENDA MAY HAVE BEEN PREVIOUSLY NOTICED WITH EARLIER DEADLINES FOR SUBMITTING WRITTEN COMMENTS. IN THOSE CASES THE EARLIER DEADLINES APPLY.***

Comments on agenda items will be accepted by E-mail subject to the same conditions set forth for other written submissions as long as the total submittal (including attachments) does not exceed five printed pages in length. E-mail must be submitted to: [rb9agenda@waterboards.ca.gov](mailto:rb9agenda@waterboards.ca.gov) to insure consideration by the Regional Board. Type the word "Agenda" in the subject line.

Pursuant to Title 23, California Code of Regulations, Section 648.4, the Regional Board may refuse to admit written testimony into evidence if it is not submitted to the Regional Board in a timely manner, unless the proponent can demonstrate why he or she was unable to submit the material on time or that compliance with the deadline would create an unreasonable hardship.

NOTE C, attached to this Notice, contains a description of the hearing procedures that will be followed by the Regional Board. Hearings before the Regional Board are normally conducted using procedures that do not include cross-examination. Parties requesting use of more formal procedures must do so in accord with the directions in NOTE C. Any such request, together with supporting material, must be received in the Regional Board's office no later than 5:00 P.M. on Wednesday, October 26, 2005.

*Except for items designated as time certain, there are no set times for agenda items. Items may be taken out of order at the discretion of the Chairman.*

1. Roll Call and Introductions
2. PUBLIC FORUM: Any person may address the Regional Board at this time regarding any matter within the jurisdiction of the Board which is not on the agenda. Submission of information in writing is encouraged. **Presentations will be limited to three minutes.**
3. Minutes of Board Meeting: October 12, 2005.
4. Chairman's, Board Members', State Board liaison's and Executive Officer's Reports: These items are for Board discussion only. No public testimony will be allowed, and the Board will take no formal action.

***Consent Calendar: Items 5 through 7 are considered non-controversial issues. (NOTE: If there is public interest, concern or discussion regarding any consent calendar item or a request for a public hearing, then the item(s) will be removed from the consent calendar and considered after all other agenda items have been completed)***

5. Update of Waste Discharge Requirements: Skyline Ranch Country Club Wastewater Treatment Plant, Valley Center, San Diego County (tentative Order No. R9-2005-0258) (*Victor Vasquez*)
6. Basin Plan Amendment: Amendment to the *Water Quality Control Plan for the San Diego Basin* (9) to add unnamed or unidentified waterbodies to the beneficial use tables and make water quality objective table corrections (Basin Plan Issue No. 3). ***The Board previously received public comments on the Basin Plan amendment. This item is for Board adoption only.*** (Tentative Resolution No. R9-2005-0239) (*Linda Pardy*)
7. Basin Plan Amendment: Amendment to the *Water Quality Control Plan for the San Diego Basin* (9) to incorporate authorization for compliance time schedules in National Pollutant Discharge Elimination System requirements (Basin Plan Issue No. 6). ***The Board previously received public comments on the Basin Plan amendment. This item is for Board adoption only.*** (Tentative Resolution R9-2005-0238) (*Linda Pardy*)

***Remainder of the Agenda (Non-Consent Items):***

8. Supplemental Environmental Project (SEP): JRMC Real Estate, Inc., Escondido, CA. The Regional Board will consider a \$200,000 SEP proposal titled "Invasive Species/Erosion Control Program (ISECP) - Stormwater SEP" located in the upper and middle Escondido Creek watershed (HSU 4.62 and 4.63). Proposal of a SEP is part of the settlement of the \$1.2 million Administrative Civil Liability Order (ACL) No. R9-2005-0237 adopted by the Regional Board on September 14, 2005, which allows the Discharger to satisfy up to \$200,000 of the liability to fund SEPs that are acceptable to the Regional Board. If the Regional Board does not approve the discharger's proposal by December 14, 2005, then JRMC will be required to direct the \$200,000 to the State Board's Cleanup and Abatement Account. (Tentative Resolution R9-2005-0262) (*Frank Melbourne*)
9. Notices of Violations Issued to San Diego County Municipal Storm Water Copermittees: The

Regional Board will review and discuss alleged noncompliance by the copermitees in the implementation of the required Watershed Urban Runoff Management Plan of Municipal Storm Water Permit No. 2001-01 (NPDES Permit No. CAS 0108758). The Regional Board may act to affirm, modify, or rescind the Notices of Violation and may direct other actions as appropriate. *(John Robertus)*

10. Section 401 Water Quality Certification: Greystone Homes, Sky Ranch Project in Santee, San Diego County. *(Mike Porter)*
11. Section 401 Water Quality Certification: KB Home, San Marcos Highlands Residential Project, County of San Diego. The Regional Board will consider the issuance of a technically conditioned Section 401 certification for impacts from the discharge of fill material to Agua Hedionda Creek. *(Christopher Means)*
12. Consideration of a Resolution Delegating Certain Authorities to the Executive Officer and Subordinate Staff. The Board will consider renewing its previous delegations of authorities pursuant to California Water Code Section 13223. *(Art Coe)*
13. **PUBLIC HEARING:** Executive Officer issuance of Cleanup and Abatement Order No. R9-2005-0017 to the Bulen Family Trust for discharges of chlorinated waste to waters of the state in violation of the Porter-Cologne Water Quality Control Act. *(Laurie Walsh)*
14. Workshop: A review of the requirement for fiscal assurances as required in the Municipal Stormwater Permits in the San Diego Region. The Regional Board will review and discuss compliance with the regulatory requirement to establish sustained funding for the copermitee stormwater program. Participation by dischargers and the public is encouraged. *(John Robertus)*
15. Approval of Year 2006 Board Meeting Schedule *(John Robertus)*
16. *Executive Session* - Discussion of Ongoing Litigation  
The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

*WILLIAM P. JOHNSON, an individual; and VAIL LAKE USA, LLC, a California limited liability company v. REGIONAL WATER QUALITY CONTROL BOARD – SAN DIEGO, a State of California board and DOES 1-50.* Superior Court of the State of California for the County of San Diego, Case No. GIC815227; Petition for Writ of Mandate and Complaint for Damages in regards to Administrative Civil Liability Order No. R9-2002-0027 for violations of the statewide Construction Storm Water Permit, Order No. 99-08-DWQ. *(Frank Melbourne)*

*Divers' Environmental Conservation Organization v. State Water Resources Control Board,* San Diego Superior Court, Case No. GIC819689. Petition for Writ of Mandate challenging waste discharge requirements for U.S. Navy, Naval Station San Diego based on absence of numeric effluent limits for toxic pollutants in discharges of storm water. *(Paul Richter)*

*Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region.* San Diego Superior Court, Case No. GIC 822750. Verified Petition for Writ of Mandate for Breach of Contract.

*Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region.* San Diego Superior Court, Case No. GIC 824706. Verified Petition for Writ of Mandate for Breach of Contract.

17. *Executive Session* - Consideration of Initiation of Litigation  
The Regional Board may meet in closed session to consider initiating criminal prosecution against persons who are alleged to have violated the Porter-Cologne Water Quality Control or the federal Clean Water Act.
18. *Executive Session* - Discussion of Pending Litigation  
The Regional Board may meet in closed session to discuss pending litigation.
19. *Executive Session* - Personnel  
The Regional Board may meet in closed session to consider personnel matters involving exempt employees [Authorized under Government Code Section 11126(a)]
20. Arrangements for Next Meeting and Adjournment  
Wednesday, December 14, 2005 - 9:00 a.m.  
Water Quality Control Board  
Regional Board Meeting Room  
9174 Sky Park Court  
San Diego, California

### ***Notifications***

A. San Diego Bay--Shipyard Sediment Site Cleanup Project and Tentative Cleanup and Abatement Order No. R9-2005-0126: On October 18, 2004 the Presiding Officer of the Advisory Team of the Regional Board issued an Order of Proceedings resulting from the a Pre-Hearing Conference conducted on September 26, 2005. A copy of the Order of Proceedings dated October 18, 2005 is available from the Regional Board's website: [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego) (Michael McCann)

B. On October 18, 2005 the Executive Officer issued revised monitoring and reporting requirements to municipalities in the Aliso Creek watershed of Orange County for the investigation of indicator fecal bacteria in the watershed. At the October 12, 2005 meeting of the Regional Board, the Board provided direction to the Executive Officer to modify the Aliso Creek bacteria monitoring program as requested by the municipalities. Annual reporting of the monitoring investigation is required pursuant to California Water Code Section 13267. (Jeremy Haas)

### **DIRECTIONS TO REGIONAL BOARD MEETING**

- From Downtown: I-15 north - take the Aero Drive exit - turn left (west). Proceed to the 3<sup>rd</sup> stoplight, which is Ruffin Road – turn right. Turn left on Sky Park Court (stoplight). Our building is located at the end of the court – veer to the right into the parking lot.
- From the North: I-15 south - take the Balboa Ave. exit - turn right (west). Proceed to the 2<sup>nd</sup> stoplight, which is Ruffin Road – turn left. Turn right on Sky Park Court (stoplight). Our building is located at the end of the court – veer to the right into the parking lot.

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
November 9, 2005

ITEM: 13

SUBJECT: Cleanup and Abatement Order No. R9-2005-0017 to the Bulen Family Trust for discharges of chlorinated waste to waters of the state in violation of the Porter-Cologne Water Quality Control Act. (*Laurie Walsh*)

PURPOSE: Affirm the issuance of Cleanup and Abatement Order No. R9-2005-0017.

PUBLIC NOTICE: The Agenda notice for the November 9, 2005 Regional Board meeting serves as the public notice for this item.

DISCUSSION: On August 23, 2005 and pursuant to California Water Code Section 13304, the Executive Officer issued Cleanup and Abatement Order No. R9-2005-0017 (Document No. 2) to the Bulen Family Trust (hereinafter Discharger) for discharges of waste to both land and ground water from the site currently occupied by Lovett's One Hour Dry Cleaners at 1378 East Grand Avenue in Escondido, California (the Site) (Document No. 5). Cleanup and Abatement Order No. R9-2005-0017 requires the Bulen Family Trust to (1) cleanup and abate the waste discharged, (2) develop and submit a work plan designed to guide the collection of additional soil and ground water data to complete the site investigation and characterization effort, (3) prepare and submit a Site Investigation and Characterization Report that documents the extent of impacts from the waste discharged, (4) prepare and submit a Feasibility Study that evaluates cleanup and abatement alternatives and presents a preferred cleanup alternative, (5) prepare, submit, and implement a Remedial Action Plan, and (6) prepare and submit a Remedial Action Report to verify completion of the cleanup and abatement actions take at the Site.

Initial site investigation was conducted between 1998 and 2004 under the regulatory oversight of the County of San Diego Department of Environmental Health (County DEH). Through the County DEH's Voluntary Assistance Program (VAP) notification process the Regional Board reviewed the County DEH's closure summary report on this Site. After review of the case closure report and the County DEH's case file on the Site, the Regional Board determined that the County DEH never required the Discharger to conduct a remedial action at the Site.

Coupled with the fact that no remedial action occurred at the Site, the discharge of waste to soil and ground water has not been adequately defined. Inadequate definition of Site contamination restricts the Discharger's ability to conduct an adequate remedial alternatives analysis and to implement appropriate remedial actions.

Cleanup and Abatement Order No. R9-2005-0017 was issued based upon findings of incomplete site assessment and in situ waste concentrations in excess of Basin Plan water quality objectives. Site assessment is incomplete because soils containing chlorinated solvent waste are elevated at depth (e.g. Tetrachloroethylene – PCE at 55,000 ug/kg at 14 feet below ground surface (bgs)) and in shallow soils (e.g. Trichloroethylene – TCE at 260,000 ug/kg at 2 feet bgs). Concentrations of PCE in ground water are as high as 14,000 ug/l and TCE as high as 1,100 ug/l, well above their Basin Plan Water Quality Objectives of 5 ug/l (Document No. 3). Site soil containing chlorinated solvent waste has not been removed, treated, or the affects of the discharge abated to protect water quality and the environment.

In a letter dated October 17, 2005 (Document No. 4), the Bulen Family Trust requested a public hearing at today's meeting to request rescission of Cleanup and Abatement Order No. R9-2005-0017.

**KEY ISSUES:** The discharge of chlorinated solvent waste to soil and ground water at the Site is not adequately defined. Chlorinated solvent waste has not been removed, treated, or the affects of the waste abated, thereby causing and threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050.

**LEGAL CONCERNS:** The Bulen Family Trust has retained the law firm of Procopio, Cory, Hargreaves & Savitch LLP (PCHS) to represent them in this matter before the Regional Board. PCHS submitted material pertinent to this Item on October 26, 2005 (Document No. 5).

**SUPPORTING DOCUMENTS:**

1. Transmittal letter dated August 23, 2005
2. Cleanup and Abatement Order No. R9-2005-0017
3. Technical Analysis for CAO R9-2005-0017
4. Letter from Procopio, Cory, Hargreaves & Savitch, LLP
5. Agenda Item Material from Procopio, Cory, Hargreaves & Savitch LLP
6. Site Maps

**RECOMMENDATION:** Affirmation of issuance of Cleanup and Abatement Order No. R9-2005-0017 is recommended.